

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

Civil Action No. 4:17-cv-03775

UNITED STATES OF AMERICA,

Plaintiff,

v.

MORGAN STANLEY CAPITAL GROUP INC.,

Defendant.

COMPLAINT

Plaintiff United States of America, by its undersigned attorneys, by authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action against Morgan Stanley Capital Group Inc. (“MSCG” or “Defendant”) brought under Sections 205(b) and 211(d) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7524(b) and 7545(d), for violations of the regulations prescribed under Sections 211(c) and (k) of the Act, 42 U.S.C. §§ 7545(c) and (k), relating to Defendant’s production of reformulated blendstock for oxygenate blending (“RBOB”) that did not meet the applicable volatile organic compound (“VOC”) emissions performance reduction standards.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties under 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 205(b) and 211(d) of the Act, 42 U.S.C. §§ 7524(b) and 7545(d).

3. The United States district courts are authorized to restrain violations, award other appropriate relief, and assess civil penalties for violations of Section 211 of the Act, 42 U.S.C. § 7545, and the regulations promulgated thereunder. *See* 42 U.S.C. §§ 7524(b), 7545(d).

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1395(a), and Section 205(b) of the Act, 42 U.S.C. § 7524(b), because the violations which are the basis of this Complaint occurred in this District.

AUTHORITY

5. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the EPA under 28 U.S.C. §§ 516 and 519, and Section 305(a) of the Act, 42 U.S.C. § 7605(a).

PARTIES

6. Plaintiff United States of America is acting at the request and on behalf of the EPA.

7. Defendant MSCG is a Delaware-based corporation that operates as a subsidiary of Morgan Stanley and provides commodities trading services. At times relevant to this Complaint, MSCG conducted component blending of gasoline using leased tanks at terminals owned and operated by third parties.

STATUTORY AND REGULATORY PROVISIONS

8. Section 211(c) of the Act, 42 U.S.C. § 7545(c), grants the EPA the authority to regulate fuels that contribute to air pollution that endangers public health or welfare, or that impairs emission control equipment.

9. Section 211(k) of the Act, 42 U.S.C. § 7545(k), prescribes requirements relating to the sale of gasoline that reduces toxic air pollutants and ozone-forming VOCs in certain non-attainment areas.

10. The EPA promulgated the reformulated gasoline (“RFG”) regulations at 40 C.F.R. Part 80, Subpart D, pursuant to Sections 211(c) and (k) of the Act, 42 U.S.C. §§ 7545(c) and (k).

11. The RFG regulations require refiners to designate all RFG and RBOB as either VOC-controlled or not VOC-controlled. 40 C.F.R. § 80.65(d).

12. In the case of gasoline that is VOC-controlled, it must be designated for use in either VOC-Control Region 1 or VOC-Control Region 2 (as defined in § 80.71). *Id.*

13. Additionally, refiners must designate whether they are complying with the VOC emissions performance reduction standards on a per-gallon basis or on an annual average basis for each refinery. 40 C.F.R. § 80.65(c).

14. For gasoline designated as VOC-Control Region 1, the per-gallon VOC emissions performance reduction standard is greater than or equal to 27.5 percent, and the averaged VOC emissions performance reduction standard is greater than or equal to 29.0 percent. 40 C.F.R. § 80.41(e)-(f).

15. For gasoline designated as VOC-Control Region 2, the per-gallon VOC emissions performance reduction standard is greater than or equal to 25.9 percent, and the averaged VOC emissions performance reduction standard is greater than or equal to 27.4 percent. *Id.*

16. If, however, a refiner produces RFG or RBOB by combining previously certified RFG or RBOB (collectively, “PCG”) with blendstocks and elects to comply with the VOC emissions performance reduction standards on a per-gallon basis, then the standard is the more

stringent of either: (1) the per-gallon standard; or (2) the most stringent value for VOC emissions performance reduction for any PCG used to produce that batch. 40 C.F.R. § 80.65(i)(3)(i).

17. 40 C.F.R. § 80.2(i) defines a “refiner” as any person who owns, leases, operates, controls, or supervises a refinery.

18. 40 C.F.R. § 80.2(h) defines a “refinery” to mean any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline is produced, including any facility at which blendstocks are combined to produce gasoline, or at which blendstock is added to gasoline.

19. Any person who, after January 12, 2009, through November 2, 2015, violates the regulations prescribed under Sections 211(c) and (k) of the Act, 42 U.S.C. §§ 7545(c) and (k), including the RFG regulations at 40 C.F.R. Part 80, Subpart D, is subject to a civil penalty up to \$37,500 per day per violation and the amount of economic benefit or savings resulting from the violation. 42 U.S.C. § 7545(d)(1); 40 C.F.R. § 19.4.

GENERAL ALLEGATIONS

20. MSCG is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

21. In 2013 and 2014, MSCG conducted gasoline blending operations using leased tanks at the Kinder Morgan terminal in Pasadena, Texas.

22. In 2013 and 2014, MSCG produced RBOB at the Kinder Morgan Terminal in Pasadena, Texas by combining PCG with blendstocks and designated it as VOC-controlled for use in VOC-Control Region 1.

23. In 2013 and 2014, MSCG elected to comply with the VOC emissions performance reductions standards at the Kinder Morgan terminal on a per-gallon basis.

24. The Kinder Morgan terminal in Pasadena, Texas is a “refinery” within the meaning of 40 C.F.R. § 80.2(h).

25. At all relevant times, MSCG was a “refiner” within the meaning of 40 C.F.R. § 80.2(i).

CLAIM FOR RELIEF

(Violations of the Reformulated Gasoline Requirements)

26. Paragraphs 1 through 25 are re-alleged and incorporated by reference.

27. In 2013 and 2014, 27 of the batches of RBOB MSCG produced at the Kinder Morgan terminal in Pasadena, Texas by blending PCG with blendstocks and designated as VOC-controlled for use in VOC-Control Region 1 (approximately 97.3 million gallons), violated the VOC emissions performance reduction standards at 40 C.F.R. § 80.65(i)(3)(i). While the batches met the per-gallon standard of 27.5 percent, the PCG used to make the batches had a more stringent value for VOC emissions performance reduction. These batches are identified in Exhibit A.

28. The violations set forth above subject Defendant to civil penalties of up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from the violations. 42 U.S.C. § 7545(d)(1); 40 C.F.R. § 19.4.

PRAYER FOR RELIEF

WHEREFORE, based on the allegations contained in paragraphs 1 through 28 above, Plaintiff respectfully requests that this Court:


A. Assess a civil penalty against Defendant for each violation of the regulations prescribed under the Act, of up to \$37,500 per day for each violation, plus the amount of economic benefit or savings resulting from the violation; and

B. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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EXHIBIT A

Batch Number	Production Date	Batch Volume (gallons)	Batch VOC Reduction (%)	PCG VOC Reduction (%)
139	3/17/13	5,867,694	29.6	31.3
143	3/29/13	2,376,066	28.2	31.3
146	4/3/13	5,834,598	28.7	31.3
148	4/15/13	1,166,718	30.9	32.3
162	6/20/13	3,970,764	28.8	29.6
188	8/29/13	2,334,822	28.1	28.6
189	9/4/13	5,838,000	27.5	32.2
148	5/4/14	2,333,352	28.0	28.7
162	5/19/14	2,873,724	28.9	29.3
170	6/3/14	2,766,414	27.6	31.4
177	6/10/14	1,167,432	28.2	29.1
178	6/10/14	2,338,182	29.0	31.4
179	6/12/14	4,519,788	28.3	31.4
188	6/27/14	6,237,336	28.4	30.1
189	6/28/14	4,664,142	28.0	31.4
192	7/5/14	5,444,544	29.3	31.4
194	7/8/14	2,336,796	29.4	30.8
195	7/10/14	6,298,068	28.6	31.3
201	7/16/14	1,173,564	31.2	31.3
202	7/18/14	3,144,834	29.6	31.3
206	7/20/14	1,199,772	28.0	29.7
210	7/25/14	1,167,264	27.8	30.2
215	7/30/14	3,462,900	30.4	31.3
221	8/4/14	3,972,276	27.9	31.3
237	8/14/14	3,989,706	27.7	31.3
238	8/20/14	5,777,100	28.7	31.3
248	9/7/14	5,035,674	28.9	30.8

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the following party by U.S. Mail:

Susan Harris
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

/s/ James D. Freeman
JAMES D. FREEMAN